Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 28, 1994.

Dated: February 17, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Invitation, Bid, and/or Acceptance or Authorization, VA Form 26–6724.

2. The form is used to solicit competitive bids or serves as a work order for the repair of properties acquired by VA. It also serves as a record of contractor's bids, VA acceptance of bid, inspection of completed work, and a contractor's invoice and payment.

3. Businesses or other for-profit.

4. 1 hour (The annual burden is estimated at 100,000 hours. VA requests 1 hour of annual burden for this information collection as the solicitation of bids is a common practice in the real estate management industry, and the submission of bids is routine with repair contractors.)

5. 30 minutes.

6. On occasion

7. 200,000 respondents.

[FR Doc. 94–4318 Filed 2–24–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 38
Friday, February 25, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: March 4, 1994, 9:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

February 23, 1994

I. Approval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. Discussion of SAC Process Task Force
V. Staff Director's Report
VI. Appointments to the Michigan, Minnesota, Nebraska (interim), and New Jersey Advisory Committees
VII. New York Hearing Update
VIII. Future Agenda Items
IX. Briefing on Civil Rights Aspects of Health Care Reform

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: February 23, 1994.

Emma Monroig,

Solicitor.

[FR Doc. 94–4496 Filed 2–23–94; 3:02 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:35 a.m. on Tuesday, February 22, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding administrative enforcement proceedings.

Application of Smith County Bank, Taylorsville, Mississippi, an insured State nonmember bank, for consent to purchase certain assets and assume certain liabilities of The Bank of Raleigh, Raleigh, Mississippi, an insured State nonmember bank, and for consent to establish the three offices of The Bank of Raleigh as branches of Smith County Bank.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: February 22, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–4432 Filed 2–23–94; 10:11 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 2, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4490 Filed 2–23–94; 3:02 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 38
Friday, February 25, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Training in Early Childhood Education and Violence Counseling

Correction

In notice document 94-3171 beginning on page 6249 in the issue of Thursday, February 10, 1994, make the following correction:

On page 6250, in the first column, under **DATES:**, in the second line, "February 10, 1994." should read "March 14, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 912, 952 and 970

Acquisition Regulation; Project Control System

Correction

In proposed rule document 94-2736 beginning on page 5751 in the issue of Tuesday, February 8, 1994, in the second column in the **DATES:** in the second line, "February 8, 1994". should read "April 11, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RS92-19-003, RS92-19-004, RS92-19-007, RS92-19-008,RP92-104-000 and RP92-131-000 (Consolidated Inpart)]

KN Energy, Inc.; Comment Period

Correction

In notice document 94-2800 beginning on page 5762 in the issue of Tuesday, February 8, 1994, in the third column, in the heading, the Docket Numbers should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4214-10; COC-55542]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

Correction

In notice document 94-1294 beginning on page 3120 in the issue of Thursday, January 20, 1994, make th following corrections:

1. On page 3121, in the first column, in the land description, under T. 1 N., R. 3 W., under Sec. 7, in the third line, "lost" should read "lots".

2. On page 3121, in the first column, in the land description, under T. 10 S., R. 103 W., under Sec. 15, in the second line, "E½SE¼SW¼;" should read "E½SW¼SW¼;".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33571; File No. SR-CHX-94-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to the Capital Requirement for the Designated Primary Market Maker in the Chicago Stock Basket

February 1, 1994.

Correction

In notice document 94-2824 beginning on page 5798, in the issue of Tuesday, February 8, 1994, in the second column, the date following the subject heading, was omitted and is correctly set out above.

BILLING CODE 1505-01-D

federal register

Friday
February 25, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 83

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 83

RIN 1076–AC46

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule makes substantial changes in the administrative process for Federal acknowledgment of Indian groups as tribes entitled to a government-to-government relationship with the United States. Changes are made to clarify requirements for acknowledgment and define more clearly standards of evidence. Provision is made for a reduced burden of proof for petitioners demonstrating previous Federal acknowledgment. Procedural improvements include an independent review of decisions, revised timeframes for actions, definition of access to records, and opportunity for a formal hearing on proposed findings. These changes will improve the quality of materials submitted by petitioners, as well as reduce the work required to develop petitions. They are also intended to provide a faster and improved process of evaluation.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, MS 2611–MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

This final revised rule is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Regulations governing the administrative process for Federal acknowledgment first became effective October 2, 1978. Initially designated as 25 CFR part 54, they were later redesignated without change as 25 CFR part 83. Prior to 1978, Federal acknowledgment was accomplished both by Congressional action and by various forms of administrative decision. However, there still remained in the 1970's many acknowledgment claimants whose character and history varied widely. The regulations established the first detailed, systematic process for review of petitions from groups seeking Federal acknowledgment.

Proposed revised regulations were published on September 18, 1991, at 56 FR 47320. These were published in response to issues raised by diverse parties concerning interpretation of the regulations and administration of the review process. The proposed revised regulations also incorporated changes based on the perspective that had been gained by the Department from 13 years of experience administrating the acknowledgment process.

The public comment period of 90 days was extended for an additional 30 days, until January 17, 1992. Public meetings were held at nine locations around the country. Sixty-one written comments were received from 59 different individuals. These individuals included representatives of unrecognized groups, recognized tribes, Indian legal rights organizations, State governments, and Federal agencies, as well as individual attorneys, anthropologists, and other scholars. The issues and concerns raised by commenters are summarized below, followed by the Department's response and a description of changes made in response to comments.

II. Review of Public Comments

Overview

These final regulations include changes which make clearer the meaning of the criteria for acknowledgment and make more explicit the kinds of evidence which may be used to meet the criteria. The general standards for interpreting evidence set out in these regulations are the same as were used to evaluate petitions under the previous regulations. In some circumstances, the burden of evidence to be provided is reduced, but the standards of continuity of tribal existence that a petitioner must meet remain unchanged.

None of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations. Neither will the changes result in the denial of petitioners which would have been acknowledged under the previous regulations.

Standards of Evidence and Stringency of Requirements

Comments: Several commenters stated that the proposed revisions represented a major escalation of requirements and/or that they codified de facto escalations of requirements that had occurred in the Department's application of the regulations in the 13 years since they became effective in October 1978. Several other commenters stressed the importance of maintaining the present standards and the necessity of stringent standards for Federal acknowledgment.

Response: The Department does not agree that the standards of evidence have escalated at any time, nor that the proposed revisions have increased the requirements. The acknowledgment criteria and definitions were modified on the basis of 13 years experience dealing with a wide variety of cases. Changes were made to clarify the meaning of the criteria and intent of the regulations, and make possible efficient development of evidence specifically focused on the requirements.

Comments: A number of commenters requested a specific statement of the general burden of evidence. Most suggested demonstration by a "preponderance" of evidence or that a criterion be considered met if it were more likely true than not.

Response: These comments are based on the incorrect assumption that the acknowledgment process presently requires proof beyond a doubt. The process only requires evidence providing a reasonable basis for demonstrating that a criterion is met or that a particular fact has been established. "Preponderance" is a legal standard focused on weighing evidence for versus against a position. It is not appropriate for the present circumstances where the primary question is usually whether the level of evidence is high enough, even in the absence of negative evidence, to demonstrate meeting a criterion, for example, showing that political authority has been exercised. In many cases, evidence is too fragmentary to reach a conclusion or is absent entirely In response to these comments, language has been added to § 83.6 codifying current practices by stating that facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity The section further indicates that a criterion is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner.

Further, because the above standard is so general, additional language has been added in § 83.6 and § 83.7 to clarify the standard of proof as it relates to particular circumstances or criteria. In particular, many commenters interpreted the revised regulations as requiring a group to demonstrate that it

meets the criteria in historical times by using the same kinds of evidence as for the present. In fact, actual acknowledgment decisions to date have clearly recognized the limitations of the historical record and have utilized standard scholarly requirements for determining the nature of societies in the past. It has been the Department's experience that claimed "gaps" in the historical record often represent deficiencies in the petitioner's research even in easily accessible records.

Language has also been added to § 83.6 which explicitly takes into account the inherent limitations of historical research on community and political influence. Further, the section allows for circumstances where evidence is genuinely not available, as opposed to being available but not developed by appropriate research. This does not mean, however, that a group can be acknowledged where continuous existence cannot be reasonably demonstrated, nor where an extant historical record does not record its presence.

Comment: Extensive comment was received concerning the requirement to demonstrate continuous existence as a tribe since first sustained contact. Comments were divided concerning interpretation and/or modification of the definition of "continuous." Some expressed the opinion that a stated period of years should be defined as a permissible "interval" during which a group could be presumed to have continued to exist. A petitioner would only have to demonstrate its existence before and after the interval. Intervals as long as 50 years were suggested. The suggestion to establish criteria for "intervals" is based on the language "generation to generation" which appeared in the original definition of "continuous." Other commenters felt that the "generation to generation" language was vague and inappropriate and should be eliminated in favor of a more careful, technical explanation of the standards required to demonstrate continuity of existence.

It was also suggested that no demonstration of continuity be required if a group is presently a tribe and can show ancestry from a historic tribe. A variant of this was a suggestion that petitioners only be required to demonstrate continuity since 1934. This date was suggested because it was the period of initial implementation of the 1934 Indian Reorganization Act.

Response: Language has been added to the regulations to make explicit the existing standard that criteria (b) and (c) do not have to be documented at every point in time. The phrase "generation to generation" has been removed from the definition of continuous. The additional language added to § 83.6 concerning standards of evidence clarifies the requirements for demonstrating historical existence. However, in the Department's view it is inappropriate to establish a specific interval during which tribal existence may be presumed. The significance of an interval must be considered in light of the character of the group, its history, and the nature of the available historical evidence. It has been the Department's experience that historical evidence of tribal existence is often not available in clear, unambiguous packets relating to particular points in time. More often, demonstration of historical existence requires piecing together various bits of information of differing importance, each relating to a different historical date.

The purpose of the acknowledgment process is to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians. Acknowledgment as a historic tribe requires a demonstration of continuous tribal existence. A demonstration of tribal existence only since 1934 would provide no basis to assume continuous existence before that time. Further, the studies of unrecognized groups made by the Government in the 1930's were often quite limited and inaccurate. Groups known now to have existed as tribes then, were portrayed as not maintaining communities or political leadership, or had their Indian ancestry questioned. Thus, as a practical matter, 1934 would not be a useful starting point.

Comment: In the proposed revised regulations, the definition of "continuity" was revised to require that "substantially" rather than "essentially" continuous existence be demonstrated. Some commenters interpreted this as an escalation of requirements.

Response: The change in wording is a reduction in the stated requirements to demonstrate tribal existence. The modification in wording reflects how the previous regulations had always been applied. "Essentially" means that there can be almost no interruptions. "Substantially" continuous is a lesser requirement which means only that overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited.

Comment: The language in § 83.6(d) concerning fluctuations in tribal activity drew a number of comments. Some commenters approved of it, some objected to it, and others requested that it be clarified. Commenters were uncertain about how the language was to be applied to the criteria. Some objected to the use of the qualifier "sole" in the phrase describing fluctuation as a cause of denial. They felt that using fluctuation as a cause for denial was inappropriate.

Response: The language regarding fluctuations in activity appears in the present regulations in § 83.7(a). It was moved to § 83.6, the section dealing with general provisions, to make clear that it applied to all the criteria. It is now placed together with the new language concerning historical continuity, and should be read together with the new language.

The language concerning fluctuations recognizes that acknowledgment determinations should take into account that the level of tribal activity may decrease temporarily for various reasons such as a change in leadership or a loss of land or resources. These real historical fluctuations are different from variations in documentation that result from an incomplete historical record. To clarify the meaning, the qualifier "sole" has been omitted and the sentence rewritten to state that fluctuations will not in themselves be the cause of denial.

Comments: Commenters stated that the proposed revisions of the regulations were inadequate because they did not make clear what evidence was required to meet the criteria in § 83.7 (b) and (c). Some commenters requested a more explicit specification of the evidence needed to meet these criteria in order to clarify the petitioner's burden of proof. One commenter proposed a streamlined approach using simplified and quantified standards. This individual felt that current approaches were subjective and overly complicated and that they dealt with extraneous issues.

Response: To clarify the kinds of evidence needed to demonstrate the criteria at § 83.7 (b) and (c), the revised regulations now include a list of evidence that can be used to meet each criterion. To further simplify and streamline the processes of developing and reviewing petitions, new language sets forth specific kinds of evidence considered sufficient in themselves to demonstrate that the criterion has been met. For example, the revised regulations provide that a high percentage of residence in a geographical area exclusively or almost exclusively occupied by group members is sufficient to demonstrate community. The additions to criteria (b) and (c) are discussed further below, with the review of comments about specific criteria. The existing regulations already

contained lists of specific evidence for criteria (a) and (e), and these are carried over into the revised rule. These changes will provide a more focused and efficient process of preparation and evaluation of petitions, particularly for strong, clear-cut cases.

A new paragraph, 83.6(g), has been added to the section on general provisions which specifies that these lists of specific evidence are not mandatory requirements or "tests" that a petitioner must meet. Rather, they are explicit statements of evidence that may be used to demonstrate that a criterion has been met. As in past cases, other kinds of evidence may be used to meet various criteria. The revised and expanded guidelines will further help petitioners develop their evidence by explicating the meaning of the criteria as well as approaches to demonstrating that a criterion is met.

Previous Federal Acknowledgment

Comments: Extensive comment was received on the proposed provision allowing petitioners that were federally acknowledged previously to demonstrate only that they meet the criteria from the point of previous acknowledgment until the present. Many commenters favored this provision because they viewed it as remedying a lack in the present regulations and restoring a policy in effect before the present regulations were published in 1978. No commenters objected to taking previous acknowledgment into account.

The strongest objections came from those holding the view that if a group was acknowledged previously it should be recognized now, without further requirements. These commenters felt that such a group should be acknowledged automatically unless the Government could demonstrate that the group had abandoned tribal relations voluntarily.

A variant of this approach was the suggestion that a petitioner only be required to show that it was the same as the group acknowledged previously. This could be done either by demonstrating genealogical descent or by showing that the present group constitutes a tribe under the regulations and that its members are genealogically descended from the tribe acknowledged historically.

Response: The Department's position is, and has always been, that the essential requirement for acknowledgment is continuity of tribal existence rather than previous acknowledgment. The Federal court in *United States* v. *Washington*, rejected the argument that "because their ancestors belonged to treaty tribes, the appellants benefitted from a presumption of continuing existence." The court further defined as a single, necessary and sufficient condition for the exercise of treaty rights, that tribes must have functioned since treaty times as "continuous separate, distinct Indian cultural or political communities"(641 F.2d 1374 (9th Circuit 1981)). Thus, simple demonstration of ancestry is not sufficient.

Petitioning groups may be recently formed associations of individuals who have common tribal ancestry but whose families have not been associated with the tribe or each other for many generations.

The Department cannot accord acknowledgment to petitioners claiming previous acknowledgment without a showing that the group is the same as one recognized in the past. Several previous petitioners claimed they were a historical tribe for which previous Federal acknowledgment could be demonstrated. However, it was later found that their members had no genealogical connection with the claimed tribe. In addition the present group did not connect with the previously acknowledged tribe through the continuous historical existence of a distinct community and political leadership.

The provisions concerning previously acknowledged tribes have been further revised and set forth in a new, separate section of the regulations. The changes reduce the burden of evidence for previously acknowledged tribes to demonstrate continued tribal existence. The revisions, however, still maintain the same requirements regarding the character of the petitioner. For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight. Such groups, therefore, require only a streamlined demonstration of criterion (c). Although these changes have been made, the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations.

The revised language requires the previously acknowledged petitioner as it exists today to meet the criteria for community (criterion 83.7(b) and political influence (criterion 83.7(c)). The demonstration of historical continuity of tribal existence, since last Federal acknowledgment until the present, must meet three requirements. First, the petitioner must demonstrate that it has been continuously identified by external sources as the same tribe as the tribe recognized previously. Second, continuity of political influence must be established by showing identification of leaders and/or a governing body exercising political influence on a substantially continuous basis from last acknowledgment until the present, if supported by demonstration of one form of evidence listed in § 83.7(c). Demonstration of historical community would not be required. Thus, the evidence required is less burdensome. Alternatively, if these requirements cannot be met, petitioner may demonstrate that it meets the requirements of criteria 83.7(a)–(c) from last Federal acknowledgment until the present. Third, ancestry from the historic tribe (criterion 83.7(e)) must be shown. The requirements of criterion (g), that the petitioner not be subject to legislation terminating or forbidding the Federal relationship will still apply. Criterion (f), which requires that the petitioner's members not be members of a presently recognized tribe, will also still apply.

Comments: Several commenters raised the practical question of when and how it would be demonstrated that the petitioner was in fact the same as the previously acknowledged tribe.

Response: The determination under paragraphs 83.10(b)(3) and 83.10(c)(2) that a group was previously acknowledged will only be a determination that past government actions constituted unambiguous Federal acknowledgement as a tribe. It will not be a determination that the criteria for acknowledgment have been met by the petitioning entity since the last point in time that the tribe it claims to have evolved from was acknowledged. If during the preliminary technical assistance review it becomes apparent that the petitioner cannot be linked with the previously acknowledged tribe, the petitioner will be advised. Further explanation of this procedure will be provided in the revised guidelines.

Language has been added to § 83.10(c) to provide for circumstances where a petitioner's response to the questions raised during the technical assistance review are not adequate to establish unambiguous previous Federal acknowledgment.

Comments: Many commenters felt that the definition of the term "unambiguous previous federal acknowledgment" was unclear. They requested a statement of the specific

evidence necessary to demonstrate Federal acknowledgment.

Response: Section 83.8(c) now lists three forms of evidence for unambiguous previous Federal acknowledgment. These are derived from the "Cohen criteria" used by the Department to recognize tribes between the mid-1930's and 1978. The section further provides that unambiguous previous acknowledgment may be demonstrated by other kinds of Federal action. The guidelines provided for under § 83.5(b) will include further examples and explanations of how this provision will be applied.

Comments: Several commenters felt that the regulations did not make clear whether tribal existence would have to be demonstrated from the earliest or from the latest date of Federal acknowledgment clearly identified in records. Thus, for example, a petitioner's last point of Federal acknowledgment might be when under the terms of a treaty, services were withdrawn, even though that might have been several decades after the treaty was signed.

Response: The language in § 83.8(d) has been modified to indicate that tribal existence need only be demonstrated from the latest date of Federal acknowledgment.

Comment: One commenter was concerned that the regulations might allow the isolated actions of individual Federal officials not authorized to extend acknowledgment to be interpreted as previous acknowledgment.

Response: Since the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States, no change in the definition is necessary. The definition does not apply to circumstances where services may have been provided to individual Indians, but the services were not based on their membership in a recognized tribe. Providing individual services in this way was common earlier in this century.

Interested Parties

Comments: A definition of "interested party" was added to the proposed revised regulations. Language concerning notification and participation of interested parties was added to and/or clarified in § 83.9, Notification, § 83.10, Processing of the documented petition, and § 83.11, Independent review, reconsideration and final action (sections renumbered). Some commenters approved of these changes. Yet, numerous others strongly objected to third parties having an opportunity to participate in and comment on acknowledgment petitions. Particular concern was expressed that interested parties might be able to delay the effective date of an acknowledgment determination without sufficient reason. Several commenters were concerned that third party information might be considered in advance of consideration of a petition. Conversely, several commenters wanted language to insure that recognized tribes affected potentially by a petition be notified and have an opportunity to comment.

Response: Interested parties participate fully in the acknowledgment process under the present regulations. None of the changes made in the proposed revised regulations reflected an increase in their role. It is neither necessary nor appropriate, in the Department's view, to prohibit the participation of third parties. In particular, the Department's position is that parties which may have a legal or property interest in a decision, such as recognized tribes or non-Indian governmental units, must be allowed to participate. Other parties, such as scholars with a knowledge of the history of a petitioning group, often are able to contribute valuable information not otherwise available. It has been our experience that this material is most often favorable to petitioners. Thus, participation of such interested parties is both appropriate and useful.

The Department agrees that third parties without a significant property or legal interest in a determination should not be permitted to participate without limit. Therefore, the definition of interested party has been revised to refer to third parties with a significant property or legal interest. A separate phrase informed party, has been defined in § 83.1 to refer to all other third parties. Language throughout the regulations has been revised to reflect this distinction. The revised and additional definitions should be read together with the language of § 83.11, on reconsideration, and the new language in paragraph 83.10(i) concerning a formal meeting after a proposed finding to review the bases of the determination. These revisions limit to petitioners and interested parties the right to initiate requests for a formal meeting or for reconsideration. The Assistant Secretary and the Interior Board of Indian Appeals (IBIA), respectively, will determine which third parties qualify as interested parties in the formal meeting and the process for review of requests for reconsideration.

Language has been added to § 83.9(b) to provide that recognized tribes and petitioners that can be identified as being affected by or having a possible interest in a petition determination will be notified of the opportunity to comment. Such tribes and petitioners will be considered interested parties.

A requirement that third parties who comment on a proposed finding or a final determination must provide copies of their comments to the petitioner as well as to the Department was already included in the proposed revised regulations (§ 83.10(i) and § 83.11(b) as renumbered here). In order to extend notification requirements to all stages of the process, language has been added to § 83.10(f) requiring the Department to notify petitioners of comments received from third parties before active consideration begins. Information received from third parties will not be considered by the Department until a petition is placed under active consideration.

Section-by-Section Review

Introduction: Comments relating to specific sections, not already discussed in connection with the general issues reviewed above, are reviewed below on a section-by-section basis. Because a new section, 83.8, has been added, previous sections 83.8–12 have been renumbered as § 83.9–13.

Throughout the body of the regulations, minor changes have been made in the text. These are solely for the purposes of clarity and ease of reading and have no intended change in meaning. All revisions which are intended to change the acknowledgment process have been separately noted.

Section 83.1 Definitions

Introduction: Comments on many of the most important definitions have been incorporated with the criteria with which they are associated. These comments are discussed below in § 83.7. Comments on other definitions are reviewed here.

Continental United States

Comment: A definition of continental United States was added to the proposed revised regulations to make it clear that the regulations apply to Alaska. The preamble to the proposed revised regulations further stated that the Bureau would consider whether it was appropriate to develop a modified acknowledgment process to apply to Alaska organizations wishing to be included on the **Federal Register** list of recognized tribes. One commenter strongly supported the establishment of a modified acknowledgment process for Alaska.

Response: Many Federal statutes passed since the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*) have defined Indian "tribe" to include the corporations established pursuant to ANCSA. Thus, the **Federal Register** list of tribes recognized and eligible for services was expanded to include ANCSA corporate entities (see 53 FR 52829, at 52832, December 29, 1988). The ANCSA corporations, while eligible for services as though they were "tribes" because Congress expressly included them in the statutory definition of "tribes," are not tribes in the historical or political sense.

The inclusion of non-tribal entities on the 1988 Alaska entities list departed from the intent of 25 CFR 83.6(b) and created a discontinuity from the list of tribal entities in the contiguous 48 states. On October 21, 1993, a Notice identifying tribal entities in Alaska as well as the contiguous 48 states was published in the **Federal Register** (58 FR 54364) to clarify that the villages and regional tribes are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, the Alaska villages have the same governmental status as other federally acknowledged tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, and privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes.[1] The publication of the new tribal entities list resolves the primary questions relating to Alaska which led to the consideration of adopting a possible modified acknowledgment process for Alaska (see 56 FR 47320, at 47321, September 18, 1991). Accordingly, a modification now of the acknowledgment process to address the special circumstances in Alaska is unwarranted.

Continuous and Historical

Comments: Commenters generally approved of the addition of language providing that petitioners need only trace continuity as a tribe back to the point where contact with non-Indians was sustained. This provision was aimed at eliminating possible problems caused by the often sporadic and poorly documented nature of initial contacts. Several commenters were concerned that the revised definition might lead to recognition of recently formed groups. Others felt that the change would eliminate Eastern groups whose early culture and government had been destroyed.

Response: A separate definition of sustained contact has been created by restating language incorporated in the definition of "historical" in the proposed revised regulations. The revised and added definitions concerning "historical," "continuous" and "sustained contact" reflect the current administrative practice in implementing the present regulations. They do not increase the burden of demonstrating historical continuity for Eastern groups. The definition would not permit recently formed groups in areas with long-standing non-Indian settlement and/or governmental presence to claim historical existence as a tribe.

European

Comment: Comments were received that European is an inappropriate term to describe many of the peoples that Indian societies first came into contact with.

Response: The term non-Indian has been substituted for European in the definitions of continuous, historical and sustained contact.

Indian Group

Revision: Because the term "Indian" did not clearly cover Alaskan groups, the term "Alaska Native" has been added to this definition.

Indian Tribe

Revision: Because the term "Indian" did not clearly cover acknowledged Alaskan tribal entities, the terms Alaska Native and villages have been added to this definition.

Indigenous

Revision: For clarity and consistency with portions of the regulations referring to sustained historical contact, this definition has been revised to refer to the tribe's "territory at the time of sustained contact," rather than its "aboriginal range."

Tribal Roll

Comments: One commenter objected to the requirement for "active" consent to membership while another supported it.

Response: This definition was added in the proposed revised regulations to provide a specific definition of tribal roll for the purposes of these regulations only. The intent of the regulations is to acknowledge tribes that are in fact politically autonomous of other Indian tribes. We believe that in order to meet this intent, a tribal roll, which here refers to a roll made by a recognized tribe, must clearly reflect the existence of a bilateral political relationship between the individuals listed and their tribe. The definition has been revised, however, to require that the individual have "affirmatively demonstrated" consent rather than "actively consented" to membership. This will make it clearer that a variety of actions may constitute evidence that an individual's listing on a roll reflects the existence of a bilateral political relationship with the tribe.

Undocumented Letter Petition

Comments: Comments indicated some continued confusion between the status of an undocumented letter petition and a documented petition. The former was defined in the proposed revised regulations as a letter or resolution to the Assistant Secretary-Indian Affairs indicating that an Indian group was requesting acknowledgment as a tribe. The latter was defined as containing the necessary evidence for such a request to be evaluated.

Response: The term letter of intent has been substituted for undocumented letter petition in the definitions section and throughout the regulations. This change more clearly distinguishes between a group which has merely requested acknowledgment and one which has provided the evidence necessary to review such a request. Hopefully, the change will eliminate confusion concerning the status of groups seeking acknowledgment.

Section 83.3 Scope

Section 83.3(a)

Comment: The meaning of the phrase "ethnically identifiable" was questioned. The exclusion from the proposed revised regulations of the phrase "culturally identifiable" was also questioned.

Response: The phrase "ethnically identifiable" has been eliminated because it caused some confusion and does not contribute to the implementation of the regulations. "Culturally identifiable" was previously eliminated because the regulations do not require that a successful petitioner be culturally different from non-Indians.

[1] Sol. Op. M–36,975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers" M–36,975 at 108. That portion of the opinion is subject to review, but has not been withdrawn or modified.

Section 83.3(g)

Comments: This section provides that petitioners under active consideration when revised regulations become effective may choose either to continue under the present regulations or come under the revised regulations. One commenter objected to allowing a shift if a proposed finding had already been issued and another objected to allowing any choice at all. Most of the comments concerned providing access to the Interior Board of Indian Appeals (IBIA) review process in § 83.11. Commenters argued that even if the petitioner chose to be reviewed under the present regulations, they should have access to the new appeal process. It was also suggested that petitioners whose cases were already decided under the existing regulations be allowed access to the IBIA process.

Response: The Department thinks it unlikely that the old regulations will be chosen by petitioners under active consideration. However, the comments underscored some procedural complications. Thus, language has been added to specify that the transition rules apply at any stage of active consideration, including reconsideration. Language has also been added to allow petitioners presently under active consideration to request a suspension of consideration in order to modify their petition. In addition, the regulations have been revised to allow groups choosing the original regulations to nonetheless use the IBIA process, since the Department's policy is presently to utilize the IBIA to conduct an independent review of requests for reconsideration.

No provision is being made, however, to allow already completed decisions to be reopened, since this would constitute repetitioning. Repetitioning by petitioners for which a final decision has become effective is prohibited by § 83.10(p).

It is anticipated that groups ready for active consideration but not yet being considered may wish to withdraw their petitions for further work. Such petitions would be removed from the priority register established under § 83.10(d).

Comment: Two commenters requested clarification on what procedures would apply if a court were to vacate or otherwise return a decision for reconsideration.

Response: Provisions would be made regarding what procedures should be followed on an individual basis depending on the specific court ruling. Because the court would be expected to provide guidance for each case of this type, no general provisions can be included in the regulations.

New Issues

Comment: One commenter requested that the regulations bar consideration of petitioners declared by a Federal court not to exist as tribes, if the United States and a recognized tribe were a party to the decision.

Response: It would be inappropriate to put a blanket prohibition in the regulations. Whether the United States is barred by past court decisions from acknowledging a petitioner would depend on the particular circumstances of a given decision. In such cases, the Department would undertake a legal review which would not require regulatory language to be effective.

Section 83.4 Filing a Letter of Intent

Revision: Language has been added to clarify that even though in most instances a letter of intent will be filed first, a petitioner's letter of intent may be filed at the same time and as part of its documented petition.

In addition, the language requiring that a letter of intent be signed, dated, and produced by a petitioner's governing body has been moved from the definition in § 83.1 to this section as paragraph 83.4(c).

Section 83.5 Duties of the Department

Section 83.5(a)

Comments: The proposed revised regulations changed the requirement for publication of a list of recognized tribes in the **Federal Register** from annually to periodically, as deemed necessary. Commenters objected that this change made the requirement too indefinite and that regular publication was necessary so that other Federal agencies would clearly know the status of tribes.

Response: While the Department believes annual publication is unnecessary, we agree that some regular schedule is appropriate. Consequently this section has been revised to provide for publication at least every three years, and more frequently if deemed necessary.

Comments: Comments were received requesting that the Department specify as part of the publication of the list of recognized tribes that Alaska Native villages have the status of historic tribes. This would include both those villages on lists published under the previous regulations and on the lists published in the future under the current regulations.

Response: As already indicated, on October 21, 1993, the Assistant Secretary—Indian Affairs published a Notice in the **Federal Register** (58 FR 54364) listing the recognized tribal entities in the contiguous 48 states and Alaska and clarifying the status of Alaska Native villages.

Comments: Many comments stated that the revised regulations could be used, or were intended to be used, to review tribes already on the list of recognized tribes to determine whether they should continue to be recognized.

Response: This is an erroneous and unwarranted interpretation of the proposed revised regulations. The Department has no authority to use these regulations to review the status of already recognized tribes and no intention of doing so. Both the current and the proposed revised regulations declare under § 83.3(b) that presently acknowledged tribes cannot be acknowledged under these regulations. The intent of this is that presently acknowledged tribes not be reviewed under the acknowledgment process.

Section 83.5(b)

Comments: Comments generally approved of the issuance of revised guidelines, as a way to clarify the requirements for preparation and evaluation of petitions. Some commenters were afraid that, because of the provision for periodic updating, the guidelines would be used as a way to modify the regulations without public comment. Some comments on definitions wanted key terms such as "significant" and "substantial" defined in the regulations rather than in the guidelines.

Response: The purpose of the guidelines is to clarify and explain more precisely the kinds of evidence necessary for petitions as well as the administrative procedures for reviewing petitions. It is not possible to include in the regulations a definition of all of its terms or a complete exposition of all forms of possible evidence to demonstrate that the acknowledgment criteria have been met. The provision for updating guidelines reflects the desire of the Department to continue to improve its technical assistance to petitioners. The revised guidelines will allow for response to petitioner's questions and provide advice on cases or problems which have not been dealt with previously. The guidelines cannot be used to modify the regulations.

Language has been added to clarify the nature of the guidelines, by stating explicitly that they will include an explanation of the meaning of the criteria and the types of evidence necessary to meet them.

New Provision

Comments: Several commenters objected to the deletion of a provision to notify unrecognized groups of the opportunity to petition. It was recommended that because the proposed changes in the regulations are so extensive, the Department should notify petitioners and/or potential petitioners of the revised regulations.

Response: A new section, 83.5(f), has been added to provide for the notification of petitioners when the revised regulations become effective. It is our view that it is not necessary to further notify groups which have not petitioned that the regulations have been modified even if they may be aware of the acknowledgment process. That information can be provided when a letter of intent is submitted.

Section 83.6 General Provisions for the Documented Petition

Section 83.6(a)

Comment: Several commenters interpreted the word "comprehensive" in characterizing petitions as a requirement that all possible evidence be supplied.

Response: The term "comprehensive" was used to mean that the petition should contain evidence concerning all necessary aspects of the regulations. Because of objections to this term, the language was changed to require "detailed, specific" evidence.

Revision: The paragraph previously numbered 83.6(e) concerning previous Federal acknowledgment, has been reorganized and augmented and now appears as a separate section, § 83.8.

Section 83.6(f)

This is a new paragraph which makes explicit that the regulations apply not only to tribes which have existed historically as a single entity, but also to tribes which are the result of the historical combination of several tribes or subunits into a single political entity. Language to this effect was added to criterion (b) in the proposed revised regulations. That language in criterion (b) has been replaced by this general provision. Similar language appears in criterion (e) of the present regulations and, for reasons of clarity, has been left in that criterion statement.

Section 83.7 Mandatory Criteria for Federal Acknowledgment

Section 83.7(a)

Comments: There were many comments that this criterion was unfair, burdensome and unnecessary. Strong concerns were raised, particularly regarding historical identification of groups in the South, that racial prejudice, poverty, and isolation have resulted in either a lack of adequate records or records which unfairly characterized Indian groups as not being Indian. One commenter considered the criterion unnecessary because the Indian character of a group should be established adequately by the requirement under criterion 83.7(e) to show Indian ancestry, and under criteria 83.7(b) and (c) to show continuity of tribal community and political influence.

Response: The requirement for continued identification complements criteria (b), community, (c), political influence, and (e), descent from a historical tribe. The criterion is intended to exclude from acknowledgment those entities which have only recently been identified as being Indian or whose Indian identity is based solely on self-identification.

The criterion for continued identification has been revised to reduce the burden of preparing petitions, as well as to address problems in the historical record in some areas of the country. The requirement for substantially continuous external identification has been reduced to require that it only be demonstrated since 1900. This avoids some of the problems with historical records in earlier periods while retaining the requirement for substantially continuous identification as Indian. To further address the question of use of historical records, language has been added to this criterion to make explicit that the existence of historical records denying the Indian character of a group will not be considered definitive evidence that the group does not meet this criterion. In applying the present acknowledgment regulations, records denying the Indian character of a group have not been considered definitive, particularly where there is evidence that the records have been influenced by racial bias, and where other, reliable records affirming the group's Indian identity have also been available.

Comments: Few changes were made in this paragraph in the proposed revised regulations. For consistency, the word "repeated" was added to several of the descriptions of specific evidence to be used to meet the criterion. While most commenters viewed these descriptions as useful, they felt that addition of the term "repeated" might be taken to mean that repeated demonstration over time was required for each kind of external identification.

Response: The intent of the paragraph is to outline the kinds of evidence which may be used in combination to demonstrate substantially continuous identification. In response to the comments, the term "repeated" has been taken out of the descriptions, since the basic criterion language clearly indicates that consistent identification by outsiders is required.

State and regional organizations have been added to § 83.7(a)(7) to better reflect the range of Indian organizations which may provide external identification.

The criterion language has been revised to state that the kinds of evidence specified "may" rather than "shall" be used to demonstrate substantially continuous Indian identity. This has been done to reflect explicitly how this criterion has been applied under the present regulations, as well as to maintain consistency with the lists of evidence provided for other criteria, which are not mandatory.

Comment: One commenter stated that the criterion should require identification as an Indian tribe, not just as an Indian entity.

Response: The Department feels there is no need to revise the criterion in this manner. The criterion serves to establish the Indian identification as a group, but does not determine the character of that group. Tribal character is determined by the other criteria.

Section 83.7(b)

Introduction: A list of specific evidence that can be used to demonstrate this criterion, including evidence considered sufficient in itself, has been added to this criterion. This provides a clearer explanation of the meaning of the criterion and associated definitions, and of the burden required to demonstrate this criterion.

Comments: Criterion (b), demonstration of community, and the associated definition of community in § 83.1, were substantially revised in the proposed revised rule. The revision omitted an apparently implied requirement that a group live in a geographical community in order to demonstrate that this criterion was met. The revised definition effectively requires a showing that substantial social relationships and/or social interaction are maintained widely within the membership, i.e., that members are more than simply a collection of Indian descendants, and that the membership is socially distinct from non-Indians.

Several commenters applauded the omission of a geographical or territorial requirement as better reflecting the circumstances of unrecognized tribes in some parts of the country. Two commenters objected on the grounds

that a tribe cannot exist without a territorial basis.

Response: The omission of a geographical requirement reflects current practices in interpreting the regulations and recognizes that tribal social relations may be maintained even though members are not in close geographical proximity. It focuses on the essential requirement that such relationships exist to a significant degree. The change has been made so that the definition of community could encompass all forms of social interaction and not just the traditional circumstances where a tribe lived on a separate landbase. It also takes into account the historical difficulties and limitations which may have made it impossible for unrecognized groups to maintain a separate geographical community. The revised criterion does not eliminate the possibility that geographical concentrations may provide direct or supporting evidence concerning the existence of a community. The statements of specific evidence added to the criterion state explicitly that the existence of an exclusive territorial area is strong evidence that a community exists, because it indicates that significant social relationships are being maintained. Thus, the use of geographical evidence remains an option, but not a requirement.

Comment: Several commenters maintained that the existing regulations only required a showing that members were sufficiently concentrated geographically to allow the possibility that they could maintain social and political relationships, without having to show that such relationships actually existed. They maintained that a requirement to demonstrate that social relationships actually exists represents a change in the regulations.

Response: This view misinterprets the definition of community in the present regulations. The revision does not constitute a change in meaning. It is consistent with the intent of the regulations and with the legal precedents underlying the regulations, which require demonstration of the social solidarity of the tribe. It is also consistent with all acknowledgment decisions made under the existing regulations. These determinations have required evidence that significant social interaction and/or social relationships are actually maintained within the petitioner's membership.

Comments: Two commenters maintained that the revised definition adds a new requirement that "social boundaries" be shown.

Response: Distinctness is an essential requirement for the acknowledgment of tribes which are separate social and political entities. The existing criterion, and the revised one, both call for the community to be distinct from non-Indians. It is thus not a new requirement. The definition of "community" in the present regulations does not provide a definition of "distinct." The definition in the revised regulations merely adds language that defines "distinct."

Further, sharp social distinctions have been treated under the present regulations as strong evidence of cohesion within a community, since they have the effect of strengthening social interaction and relations within a group. Language to this effect has been added to criterion (b), as part of the examples of evidence which may be used to demonstrate the criterion. Sharp social distinctions include patterns of discrimination where members of a group are excluded or limited in their participation in the institutions of the larger society. While the acknowledgment regulations do not require that such sharp distinctions exist, they do require that some distinction be shown. Distinctions may also be maintained by the group itself, and not imposed by outsiders. In order to clarify the intent of the definition of community it has been modified to indicate that social distinction is the key element in the second part of the definition.

Comments: The proposed revised regulations added language to criterion (b) making it explicit that community must be demonstrated historically as well as presently. This language reflects the interpretation of the original regulations used in previous acknowledgment decisions.

Demonstration of continuity of a historical community is necessary in order to meet the intent of the regulations that continuity of tribal existence is the essential requirement for acknowledgment. In addition, political authority cannot be demonstrated without showing that there is a community within which political influence is exercised.

Some comments approved the inclusion of this language. Others opposed it as an escalation of requirements. These latter commenters further saw this revision and the revised definition of community as requiring a demonstration of specific details of interactions in the historical past, and thus as creating an impossible burden. They also viewed the requirement to demonstrate historical distinctness of community as adding a new research burden, that of "reconstructing social boundaries."

Response: A detailed description of individual social relationships has not been required in past acknowledgment decisions where historical community has been demonstrated successfully and it is not required here. The descriptions of specific kinds of evidence to demonstrate community make clear that detailed sociological reconstructions are not required. That is, historical community may be demonstrated by other means such as by showing distinct territorial areas occupied by the group, strong patterns of intermarriage within the group, etc. Further, the language added to § 83.6 clarifies that the nature and limitations of the historical record will be taken into account.

No requirement is intended, nor has one been imposed in past decisions, to demonstrate "social boundaries" in the sense of a detailed description of social interaction. In fact, however, since much of the historical data on unacknowledged groups is provided by outsiders to a group, information on social distinction is often more readily available in historical sources than is information on the internal workings of a group.

Comment: Several commenters objected to the use of the word "predominant" in the definition of community, rather than the term "substantial" as used in the previous definition. However, at least one commenter viewed the use of "predominant" as essential to insure that most of the group had significant social contact with each other.

Response: The two terms appear in the contexts of two different definitions of community. The old definition implied a geographic community, while the revised one focuses on the social character of the community. The term "predominant" is used to state a requirement that at least half of the membership maintains significant social contact with each other. The Department considers this is a reasonable standard for defining an Indian community eligible for acknowledgment. Therefore, the term has been retained.

Comment: Several individuals pointed out that retention of the language "distinct from other populations in the area" implied a geographical requirement, even though this was eliminated elsewhere.

Response: We agree, so this language has been eliminated.

Comments: Some commenters felt that having both criteria (b) and (c) was redundant, at least for the historical

periods, since, in their view, one implied the other.

Response: While the two criteria are interlinked, they are not identical. Previous acknowledgment decisions have delineated the relationship between these two criteria. Rather than eliminate one of the criteria, a description of how one can be used in some circumstances as evidence to demonstrate the other is included in the new descriptions of specific evidence which may be used to demonstrate these criteria. Contrary to the comments received, community is often easier to demonstrate historically than is political influence.

Revision: To conform with the changes in criterion (a), the language "viewed as American Indian" has been eliminated. The language was essentially redundant with the requirement of criterion (a) for identification of the group as an Indian entity.

Section 83.7(c)

Introduction: A list of specific evidence that can be used to demonstrate this criterion, including evidence considered sufficient in itself, has been added to this criterion. This addition provides a clearer explanation of the meaning of the criterion and associated definitions, and of the burden required to demonstrate this key criterion.

Comment: The present regulations do not provide a definition of the key phrase "tribal political influence or other authority." While some commenters approved of the definition added in § 83.1 of the proposed revised regulations, others interpreted it as establishing new requirements. Commenters specifically objected to the language specifying that influence on members be "in significant respects," that decisions "substantially affect members," and that outside dealings be in "matters of consequence." Several commenters suggested that the clauses in the definition be linked by "and/or" rather than "and" to indicate that these were alternatives that could be used in combination.

Response: The definition is not a change from present requirements. It reflects the legal and policy precedents underlying the regulations. These precedents have been used to interpret the existing regulations in all previous acknowledgment decisions. It is essential that more than a trivial degree of political influence be demonstrated. Petitioners should show that the leaders act in some matters of consequence to members or affect their behavior in more than a minimal way. They need not demonstrate the ability to require action or enforce decisions over strong opposition. It is also not necessary that political influence be exercised in all or most areas of members' lives or their relationships with other members. The definition provides for taking into account the history of the group, including the difficulties faced by unacknowledged groups in maintaining political influence. Yet it maintains the fundamental requirements of the regulations that political influence must not be so diminished as to be of no consequence or of minimal effect. The qualifying language is essential to the demonstration of political influence. Thus, it has been retained in the final regulations. However, the suggestion of linking the clauses with "and/or" has been adopted since it is more consistent with the intent of the definition.

Comments: Two commenters wanted stronger requirements for criterion (c). One requested that demonstration of authority over a specific area be required. The other wanted the criterion to specify "governmental" authority, meaning the demonstration of extensive, often coercive powers similar to those of recognized tribes.

Response: The requested changes would be an unwarranted escalation of the present requirements and entirely unreasonable, given the historical difficulties faced by many unacknowledged groups.

Comment: Several commenters questioned the use of the term "tribal" to qualify political influence or authority. The commenters felt that this implied some specialized type of political influence specific to Indians.

Response: The term "tribal" has been eliminated as unnecessary. It's use merely suggested that the scope of influence was over the tribal membership. It was not intended to imply a distinct type of political influence.

Comment: The significance of the word "other" in criterion 83.7(c) and the related definitions was questioned. It's inclusion was interpreted as implying an alternative definition of political processes than that actually addressed in the definition.

Response: To eliminate confusion, "other" has been removed. Now the basic phrase is "political influence or authority" rather than "political influence or other authority." "Authority" refers to exercise of political processes more directly and powerfully than is the case with "influence."

Section 83.7(d)

Comments: Two commenters supported the inclusion of this criteria, which was only slightly revised. Another concluded that it was unnecessary because its requirements could be included in criteria (c) and (e), respectively.

Response: This criterion is largely a technical requirement to provide information essential to evaluation of a petition. Since it does not constitute a significant burden on petitioners, it is being kept separate as a matter of convenience.

Section 83.7(e)

Revisions: The order in which the requirements are presented has been reversed, in order to state the most fundamental requirement first. The paragraphs describing evidence which may be used to demonstrate ancestry have been revised to be consistent with each other and to state clearly that they should provide evidence demonstrating that the present membership of a petitioner is descended from a historic tribe.

Comment: Two commenters questioned the adequacy of the language allowing ancestry to be derived from historic tribes which combined into one autonomous political entity. They interpreted it as requiring a formal union, even though tribal mergers more often occur informally. They also thought allowance should be made for the movement of families among tribes.

Response: The present language does not require a formal union, and past acknowledgment decisions have not required it. The previous decisions have also allowed for the movement of families between tribes. Thus, we believe any elaboration on this issue can best be provided in the revised guidelines.

Comment: Commenters generally supported the requirement of demonstrating tribal ancestry, but questioned whether it needed to be traced as far back as is currently required. They also questioned whether standards of proof were too strict and whether insufficient weight was given to oral history and tribal records, as opposed to governmental records.

Response: The regulations have not been interpreted to require tracing ancestry to the earliest history of a group. For most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe. Unfortunately such rolls and/or documents may not exist for some groups or where they do,

individuals may not be identified as Indians. In such instances, the petitioner's task is more difficult as they must find other reliable evidence to establish the necessary link to the historical tribe.

Weight is given to oral history, but it should be substantiated by documentary evidence wherever possible. Past decisions have utilized oral history extensively, often using it to point the way to critical documents. Tribal records are also given weight. In fact, all available materials and sources are used and their importance weighed by taking into account the context in which they were created.

Comment: One commenter considered it unreasonable to require a description of the circumstances under which historical membership lists were prepared. The commenter pointed out that such information might not be available in the historical record. The commenter interpreted the wording of the regulations as requiring this information and was concerned that, therefore, a petitioner could be denied for not meeting this requirement.

Response: Language has been added to indicate that information regarding the creation of past membership lists is required only if it can be obtained readily. Inability to provide it would not block a group's ability to meet this criterion. Such information is often vital to understanding the history of the group, and often helpful to demonstrating that the group meets this or other criteria.

Comment: Two commenters wanted the criterion to state a specific percentage of the modern membership, such as 60 percent, that would have to demonstrate ancestry from the historic tribe.

Response: The Department has intentionally avoided establishing a specific percentage to demonstrate required ancestry under criterion (e). This is because the significance of the percentage varies with the history and nature of a group and the particular reasons why a portion of the membership may not meet the requirements of the criterion.

Section 83.7(f)

Comments: Several commenters supported the revisions made to this section and the related definitions of tribal roll, membership in a recognized tribe and tribal relations. The primary concern was that the meaning of "associated with" was unclear. One commenter objected to the definition of "tribal roll" associated with this criterion. Another objected to prohibiting dual enrollment, because members of unacknowledged groups often enroll themselves or their children in recognized tribes. This may be done in order to receive essential benefits, and not with the intent of changing tribal affiliation.

Response: The phrase "associated with" is meant as a general term to encompass any situation where a petitioner may have had some relationship with a recognized tribe but is not legally incorporated with nor governed by that tribe and is not part of the same community. No better substitute term was found. The language in this section specifically prohibits use of the regulations to acknowledge portions of already recognized tribes. However, it allows for acknowledgment of rare cases where the petitioner has been regarded, erroneously, as part of or associated with another tribe, but has been a separate, autonomous group throughout history.

Section 83.7(g)

No significant comments were received on this paragraph.

Section 83.8 Previous Federal Acknowledgment

All comments relating to this section were dealt with above in the responses concerning general issues.

Section 83.9 Notice of Receipt of Petition (Formerly 83.8)

This section was renumbered from § 83.8, to permit insertion of the new, separate section concerning previous Federal acknowledgment. All comments relating to this section were dealt with above in the section concerning interested parties.

Section 83.10 Processing the Documented Petition

Introduction: This section was renumbered from § 83.9, to permit insertion of the new, separate section concerning previous Federal acknowledgment. Some paragraphs have been divided or combined, and renumbered, to group together related ideas.

Comments: Numerous comments were received objecting to the fact that no deadlines were required for Departmental action on technical assistance reviews nor to commence active consideration of a case. In contrast, it was pointed out that there were deadlines for petitioners to respond to proposed findings and final determinations.

Response: The regulations do not provide deadlines for certain Departmental actions nor for petitioners to submit documented petitions or to respond to technical assistance reviews. Deadlines only apply to the active consideration process, where both petitioners and the Department have specific timelines in which to act. The Department is committed to as timely and rapid consideration of petitions as possible. Yet, it finds it cannot guarantee deadlines for technical assistance reviews or initiation of active consideration, because it cannot predict the number size, content, or time of submission of documented petitions.

Section 83.10(a)

Comments: Several commenters objected to the deletion of the phrase "by his staff" in reference to research conducted for the Assistant Secretary. Commenters interpreted this as allowing for the use of contract researchers and felt strongly that contracting was not desirable or effective in hastening petition reviews. If contract research is to be allowed, provision was requested to enable petitioners to be fully informed about the contracting process. Commenters also asked to allow petitioners to decline to be reviewed by contractors, and to have the right to challenge the credentials of contract researchers.

Response: No change is necessary in this section. While the Department has the obligation to perform its review using qualified personnel, it is not obligated to allow petitioners to determine the personnel reviewing petitions, whether under contract or not. Contracting can play a useful role in expanding the Department's resources and providing flexibility, thereby facilitating and expediting the review of petitions. Furthermore, contracting is used only for research purposes. Evaluation and determinations of whether a petitioner meets the mandatory criteria for acknowledgment are only carried out by Departmental staff.

Section 83.10(d)

Comments: Some commenters approved of the change this section makes from basing priority of consideration on the date of submission of the letter of intent to the order in which petitions are ready for active consideration. Others opposed it as unfair or subject to manipulation.

Response: The Department's position is that the revised priority register is the most equitable approach. In the past, petitions which were ready for active consideration but had low priority numbers based on the initial letter of intent were "bumped" by petitions completed much later but with a higher priority number. This wait and

uncertainty is detrimental to the petitioning and review process.

Section 83.10(e)

Comments: Commenters generally approved of the addition of this section, which provides for a limited, speedy review of petitions which cannot, upon examination, meet the requirements of certain acknowledgment criteria. The primary concern was whether sufficient review and due process would be accorded.

Response: The section requires *clear* evidence, apparent on a preliminary review, that one of the three named criteria are not met. The section provides that, absent such clear evidence, the petition will be reviewed under the regular process. This limited evaluation will only occur after the petitioner has had the opportunity to respond to the technical assistance review. A proposed finding under this section would still be subject to the comment process before a final determination was issued. The petitioner would also have the opportunity to request reconsideration under § 83.11.

Section 83.10(f)

Comments: Several commenters were concerned that this section did not give the petitioner sufficient information about which personnel were responsible for the reviewing of their petition.

Response: The language in this section has been modified to make clear that the petitioner will be notified of the personnel actually conducting the review of their petition, as well as the supervisor in charge of the review.

Section 83.10(g)

Comments: Many commenters objected to the fact that while the Assistant Secretary can suspend review of a petition under provisions of this section, petitioners do not have the right to withdraw their petition or suspend its consideration. Some commenters suggested that the section should at least specify that the Assistant Secretary will consider such requests from a petitioner. Several commenters objected to the prohibition against withdrawal of a petition once active consideration was begun.

Response: While the present section does not prohibit consideration of petitioner requests for suspension of consideration, language has been added to specify that the Assistant Secretary will consider such requests.

The requirement for the Department to complete the review of any petition upon which work has begun has been retained. This is because of the considerable staff time and resources committed to a petition review which are wasted if the petition is subsequently withdrawn. Petitioners will have ample time to withdraw before active consideration is begun. They also will receive extensive preliminary review and advice concerning their petition. In addition, if petitioners could choose to withdraw solely because they anticipated a negative finding, this would create numerous administrative difficulties which would, in turn, slow down the reviewing process.

Section 83.10(h)

Comments: Two commenters requested that the language in this section describing the requirements for the Assistant Secretary's report to accompany the proposed finding be expanded to require that the bases for the decision be made clear.

Response: The current language calls for the report to summarize the "evidence and reasoning" for the proposed decision. Revised language has been added to further insure that the report provides a detailed discussion of the basis for the decision.

In addition, language has been added in a new section, § 83.10(j), to provide access to all records used in the finding, as well as for technical advice concerning the bases for the decision. Further, provision has been made for a formal meeting on the proposed finding which would be transcribed. This will allow a thorough exploration of the bases for the proposed finding which will be on the record, as well as an exchange of views and information between the Bureau, the petitioner and any interested parties. These changes accord with the Department's view that a proposed finding is a proposal subject to change based on additional analyses and evidence. Since new data and analysis may affect the conclusions proposed in the finding, it is important to make the petitioner clearly aware of the evidence and reasoning behind the proposed decision.

Section 83.10(i)

Comments: Several commenters observed that, based on experience to date, the 120-day response period, even with a potential 120-day extension, is greatly insufficient. Given the limitations of petitioner resources and the extent and complexity of the documentation usually involved, they felt that additional time was needed to prepare an adequate response.

Response: The Department agrees with these conclusions. The time periods in this section have been lengthened to provide for an initial 180-day response period and for an extension of up to an additional 180 days at the discretion of the Assistant Secretary. In addition, for consistency with other sections, the language of the section has been modified to make clear that comments to the Assistant Secretary may address any aspect of the proposed finding, not simply the "evidence relied upon", as the section currently provides.

Section 83.10(k)

Comments: Five commenters stated that the 60-day period for petitioners to respond to the comments of interested parties regarding a proposed finding was insufficient.

Response: The section allows for an extension of the 60-day period if warranted by the extent and nature of the comments. No limits are placed on this extension. We feel that this provision is adequate to address the needs of petitioners who may need additional time to address comments of any nature from third parties.

Comments: Two commenters requested that interested parties be allowed an opportunity to respond in turn to petitioner's comments on their submissions.

Response: Because the purpose of the response period is to address the proposed finding, there is no reason to provide for an extended exchange of comments between parties. However, because of the importance of the acknowledgment decision to petitioning groups and their future existence, opportunity is provided for petitioners to comment both on the proposed finding and on any comments received from other parties.

Section 83.10(l)

Clarification: Language has been added to this section to make it clear that the Assistant Secretary's research for the purpose of analyzing the petition and obtaining information concerning the petitioner's status, which is stated in § 83.10(a), extends through the period for preparation of a final determination.

Language has also been added to make it explicit that the Assistant Secretary may request that a petitioner or third party supplement or support their comments on a proposed finding with additional information and explanation. Comments on proposed findings are sometimes submitted without adequate supporting documentation or explanation. The absence of this information makes evaluation of the comments and preparation of the final determination difficult. These supplementary

submissions would not be required and would not require additional research on the part of the petitioner or commenting party. These revisions do not provide for a reopening of the response period and would not allow for the consideration of unsolicited comments submitted after the close of the response period.

Section 83.10(m)

Revisions: This paragraph, numbered 83.10(l) in the proposed revised regulations, has been combined with the initial sentence in § 83.10(m) (as renumbered in the proposed revised regulations), and designated together as § 83.10(m). The other paragraphs from § 83.10(m) (as renumbered), have been redesignated as separate sections.

Sections 83.10 (o) and (p) (Renumbered, Formerly 83.9(m)(2))

Comments: Twenty comments were received on this section and the related section, § 83.3(f). These sections set forth the prohibition against repetitioning by groups denied acknowledgment under the existing regulations. The present regulations are silent on the question of repetitioning. All but one of the commenters opposed this change in the regulations. The primary objections were that undiscovered evidence which might change the outcome of decisions could come to light in the future. There was also some concern that petitions could be denied because the petitioner's research was inadequate.

Some felt that proposed changes in the regulations might affect the outcome if a petition decided under the existing regulations was reevaluated under the revised rules. These commenters wanted the revised reconsideration process made available to petitioners denied in the past under the present regulations.

Response: The Department's position is that there should be an eventual end to the present administrative process. Those petitioners who were denied went through several stages of review with multiple opportunities to develop and submit evidence. Allowing such groups to return to the process with new evidence would burden the process for the numerous remaining petitioners. The changes in the regulations are not so fundamental that they can be expected to result in different outcomes for cases previously decided. Denied petitioners still have the opportunity to seek legislative recognition if substantial new evidence develops.

Section 83.11 Independent Review, Reconsideration and Final Action

Introduction: This section has been reorganized to clarify the steps in the process and to group together as far as possible the actions required of each party. This section was formerly numbered § 83.10. To better reflect the nature of this process, the words "Independent Review" have been added to the title of the section.

General Comments: Many commenters supported the provision for review of reconsideration requests by an independent body. Some commenters objected to review by the IBIA, however, stating incorrectly that it was part of the Bureau of Indian Affairs. Other commenters felt that a review body outside of the Department would provide the fairest, most independent review.

Commenters also questioned whether the IBIA has the technical expertise necessary to adequately review acknowledgment decisions. These observers requested that an *ad hoc*, independent panel of professionals be utilized to review appeals.

Response: The IBIA is an independent administrative review body within the Department. Its decisions are not reviewable by agency officials. The Department does not believe that an independent panel of experts would be an appropriate body to make the actual decision for the Secretary whether to request reconsideration.

The proposed revised regulations included general provisions intended to address the need for technical input and advice to the IBIA. Section 83.11(e)(4) provides for a hearing before an administrative law judge and § 83.11(e)(3) provides for technical comment by the Bureau at the Board's request, although the Bureau is not otherwise involved in the independent review process. However, we believe there is some merit to the concern whether adequate provision has been made to address technical aspects of acknowledgment decisions in the independent review process as set forth in the proposed revised regulations. Therefore, the language of § 83.11(e)(3) has been modified to allow the Board to obtain independent expert comment if it deems this appropriate. Additional language has been added to § 83.11(e)(4) to strengthen the role of the discretionary hearing before an administrative law judge provided for in this paragraph.

Comments: Many commenters objected to the additional grounds for reconsideration set forth in § 83.11(d)(4). This paragraph provides that alternative interpretations of evidence, not previously reviewed, may be considered. Commenters interpreted this solely in terms of allowing reversal of positive acknowledgment decisions. One commenter approved of the additional grounds but questioned the competence of the IBIA to utilize them because of its lack of technical expertise. Another commenter wanted this provision limited to expert opinion, with legal opinions barred with regard to this specific ground for reconsideration.

Response: The additional grounds are neutral. They allow equally for a positive or a negative decision to be vacated and returned to the Assistant Secretary for reconsideration on the basis that the interpretation used was incorrect or that there are valid, credible alternative interpretations of the evidence. We believe these additional grounds further guarantee fairness and flexibility appropriate to the complexity of these decisions. We do not believe it would be practical or appropriate to attempt to limit in advance the kinds of alternative interpretations offered for consideration.

Comment: Some commenters wanted to omit all but the "new evidence" grounds for reconsideration. Others objected to any opportunity to present new evidence at all, on the grounds that "due diligence" to develop such evidence should have been exercised by the petitioner, who has the burden of proof under the regulations.

Response: The administrative process is predicated on providing a maximum opportunity to develop and provide evidence, as well as further analysis of existing evidence, free of as many procedural technicalities as possible. We believe this opportunity should extend to the reconsideration process. In addition, as the response to the previous set of comments indicates, we believe that the most thorough and equitable process requires consideration of more than just new evidence.

Comments: Two commenters objected to the provisions of § 83.11(e)(8) calling for the Assistant Secretary to designate the portions of the record to be sent to the IBIA. They felt that this would allow withholding of vital documents or manipulation of the decision.

Response: The section makes explicit that the entire record is available to the Board. The limited initial transmission is called for because of the extensive nature of the record, which often runs in excess of 20,000 pages. Thus, it is merely a convenience for the initial stages of the process of considering requests for reconsideration. The filings of petitioners and interested parties will

require, in all likelihood, an examination of more of the record.

Comment: Several commenters pointed out that there was no provision for petitioners or interested parties to comment on materials submitted to the Secretary which result in a request for reconsideration under based on grounds other than those in § 83.11(d)(1–4). One commenter wanted all parties to have an opportunity to comment before the Secretary made a decision whether to request reconsideration.

Response: We believe there is merit in having an opportunity to comment in such circumstances, parallel to that provided in the review by the IBIA. We also agree that it is most appropriate that such comments be received before the decision is made by the Secretary. Therefore, provision has been made for submission to the Secretary of comments on requests for the Secretary to ask the Assistant Secretary to reconsider the determination. Where comments are from interested parties, provision has been made for a reply by the petitioner. The revised language establishes timeframes for receipt of comment.

Revision: To simplify the reconsideration process, it has been reorganized to provide that requests for reconsideration be made directly to the Board. The initial determination of the nature of the request is a straightforward one that can be more quickly made by the Board.

As another means of simplifying the reconsideration process, the Secretary will only review requests for reconsideration made on other than the four basic grounds set forth in § 83.11(b) if the Board does not remand the determination to the Assistant Secretary on one or more of the basic grounds. The Assistant Secretary, in the event of a remand, would be authorized to also consider any other grounds alleged for reconsideration besides the four basic ones.

Comments: One commenter wanted all parties to have an opportunity to comment on any technical comments provided by the Bureau under § 83.11(e)(3).

Response: It is not necessary to provide for such a comment opportunity. The Bureau under the regulations does not participate as an active party opposing or supporting the submissions of petitioner or interested parties or defending the determination. It is intended only that the Board have the opportunity to obtain the technical comment that it may need to make its decision. Further, the Board has authority under § 83.11(e)(2) to allow the active participants to respond to such technical comments if it deems this necessary and appropriate.

Section 83.12 Implementation of Decisions

Section 83.12(a)

Comments: Several commenters objected to the change made in this section identifying tribes acknowledged through this process as "historic" tribes. The commenters objected to the distinction that has been made by the Department for many years between historical tribes and other organized Indian communities. The political authority of historical tribes is derived from aboriginal sovereignty because they have existed historically as distinct tribes since first acknowledgment. In contrast, the political authority of other organized Indian communities is considered to be based solely on powers derived from Federal statutes.

Response: This language is included to make clear that tribes acknowledged through the process are historical tribes by virtue of the requirements of the regulations. Removing the language would serve no purpose in resolving current objections to the distinction between historic tribes and other organized Indian communities.

The language of this section has been edited to state more directly that tribes acknowledged through this process are historic tribes and to clarify that all federally recognized tribes are considered to have a government-to-government relationship with the United States.

Section 83.12(b)

Comments: Several commenters approved of the limitations prescribed by this section on the base membership roll of a newly acknowledged tribe. Others considered the limitation an infringement on tribal sovereignty.

Response: The provision was included to clearly define tribal membership prior to acknowledgment. It was also included so that membership for purposes of Federal funding cannot later be so greatly expanded that the petitioner becomes, in effect, a different group than the one acknowledged. The acknowledgment decision rests on a determination that members of the petitioner form a cohesive social community and exercise tribal political influence. If the membership after acknowledgment expands so substantially that it changes the character of the group, then the validity of the acknowledgment decision may become questionable. The language of this section does allow for the addition to the base roll of these individuals who are politically and socially part of the tribe and who meet its membership requirements.

Section 83.13 Information Collection

Comment: Only one comment was received which concern the burden of work stated in the information collection statement. This commenter felt that the actual burden was much higher than the stated one.

Response: The Department does not agree that the stated burden is unrealistic, if the research is focused on the information actually needed to demonstrate tribal existence. Considerable scarce research resources are wasted on materials which are not relevant to the criteria. The stated burden hours have been reduced, to reflect the revisions in the criteria and their application to petitioners which can demonstrate tribal continuity with previously acknowledged tribes. The reduction also reflects correction of an error in calculating the number of genealogical forms which need to be filled out for a petition. The explanation of the purpose of the information collection has been revised slightly to more clearly reflect all seven of the criteria in section 83.7(a–g).

III. Findings and Certifications

The Department has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations have no preemptive or retroactive effect. A major purpose of the revisions has been to address the clarity of language and general draftsmanship of the regulations. Major efforts have been made to reduce the burden on petitioners.

This rule has been reviewed under Executive Order 12866. In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects on States. This rule concerns the establishment by the Federal Government of a government-to-government relationship between the United States and Indian tribes not presently accorded that relationship. It does not affect State laws or powers, but may change the extent of their exercise or applicability to a tribe which becomes federally acknowledged. Costs or burdens to the States would not be significantly increased. Provision is made for State comment during the review of petitions for acknowledgment.

The Department has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in § 83.7 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number OMB 1076–0104.

The primary author of this document is George Roth, Cultural Anthropologist, Branch of Acknowledgment and Research, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 83

Administrative practice and procedure, Indians-tribal government.

For the reasons set out in the preamble, Title 25, Chapter 1 of the Code of Federal Regulations is amended by revising part 83 to read as follows:

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and 209 Departmental Manual 8.

§ 83.1 Definitions.

As used in this part:

Area Office means a Bureau of Indian Affairs Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or that officer's authorized representative.

Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

Board means the Interior Board of Indian Appeals.

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group.

Continental United States means the contiguous 48 states and Alaska.

Continuously or *continuous* means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption.

Department means the Department of the Interior.

Documented petition means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria in § 83.7(a) through (g).

Historically, historical or *history* means dating from first sustained contact with non-Indians.

Indian group or *group* means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

Indian tribe, also referred to herein as *tribe*, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.

Indigenous means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

Letter of intent means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

Member of an Indian group means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

Member of an Indian tribe means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

Petitioner means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.

Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sustained contact means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically.

Tribal relations means participation by an individual in a political and social relationship with an Indian tribe.

Tribal roll, for purposes of these regulations, means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll

means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes. Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part applies only to those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision.

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe.

(e) Further, groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.

(f) Finally, groups that previously petitioned and were denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title, may not be acknowledged under these regulations. This includes reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(g) Indian groups whose documented petitions are under active consideration at the effective date of these revised regulations may choose to complete their petitioning process either under these regulations or under the previous acknowledgment regulations in part 83 of this title. This choice must be made by April 26, 1994. This option shall apply to any petition for which a determination is not final and effective. Such petitioners may request a suspension of consideration under § 83.10(g) of not more than 180 days in order to provide additional information or argument.

§ 83.4 Filing a letter of intent.

(a) Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in § 83.7 may submit a letter of intent.

(b) Letters of intent requesting acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.

(c) A letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the Assistant Secretary.

§ 83.5 Duties of the Department.

(a) The Department shall publish in the **Federal Register**, no less frequently than every three years, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) The Assistant Secretary shall make available revised and expanded guidelines for the preparation of documented petitions by September 23, 1994. These guidelines will include an explanation of the criteria and other provisions of the regulations, a discussion of the types of evidence which may be used to demonstrate particular criteria or other provisions of the regulations, and general suggestions and guidelines on how and where to conduct research. The guidelines may be supplemented or updated as necessary. The Department's example of a documented petition format, while preferable, shall not preclude the use of any other format.

(c) The Department shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The Department shall not be responsible for the actual research on behalf of the petitioner.

(d) Any notice which by the terms of these regulations must be published in the **Federal Register**, shall also be mailed to the petitioner, the governor of the state where the group is located, and to other interested parties.

(e) After an Indian group has filed a letter of intent requesting Federal acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, the Assistant Secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

(f) All petitioners under active consideration shall be notified, by April 16, 1994 of the opportunity under § 83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations as published, on September 5, 1978, at 43 FR 39361.

(g) All other groups that have submitted documented petitions or letters of intent shall be notified of and provided with a copy of these regulations by July 25, 1994.

§ 83.6 General provisions for the documented petition.

(a) The documented petition may be in any readable form that contains detailed, specific evidence in support of a request to the Secretary to acknowledge tribal existence.

(b) The documented petition must include a certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition.

(c) A petitioner must satisfy all of the criteria in paragraphs (a) through (g) of § 83.7 in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in § 83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.

(d) A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria.

(f) The criteria in § 83.7 (a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

(g) The specific forms of evidence stated in the criteria in § 83.7 (a) through (c) and § 83.7(e) are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions.

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

(1) Identification as an Indian entity by Federal authorities.

(2) Relationships with State governments based on identification of the group as Indian.

(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of *community* set forth in § 83.1:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community.

(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;

(ii) At least 50 percent of the marriages in the group are between members of the group;

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in § 83.1.

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in § 83.7(b) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating

that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis.

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

§ 83.8 Previous Federal acknowledgment.

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States.

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

(1) The group meets the requirements of the criterion in § 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

(3) The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (c) from last Federal acknowledgment until the present.

§ 83.9 Notice of receipt of a petition.

(a) Within 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge such receipt in writing

and shall have published within 60 days in the **Federal Register** a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the letter of intent or documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the letter of intent and the documented petition may be examined.

(b) The Assistant Secretary shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. The Assistant Secretary shall also notify any recognized tribe and any other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) The Assistant Secretary shall also publish the notice of receipt of the letter of intent, or documented petition if a letter of intent has not been previously received, in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section.

§ 83.10 Processing of the documented petition.

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status. The Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties.

(b) Prior to active consideration of the documented petition, the Assistant Secretary shall conduct a preliminary review of the petition for purposes of technical assistance.

(1) This technical assistance review does not constitute the Assistant Secretary's review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(2) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification.

(3) If a petitioner's documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in § 83.1.

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(1) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, the Assistant Secretary will provide the additional review. However, this additional review will not be automatic and will be conducted only at the request of the petitioner.

(2) If the assertion of previous Federal acknowledgment under § 83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) The order of consideration of documented petitions shall be determined by the date of the Bureau's notification to the petitioner that it considers that the documented petition is ready to be placed on active consideration. The Assistant Secretary shall establish and maintain a numbered register of documented petitions which have been determined ready for active consideration. The Assistant Secretary shall also maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions are determined ready for active consideration on the same date, the register of letters of intent or incomplete petitions shall determine the order of consideration by the Assistant Secretary.

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.

(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the **Federal Register**. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section.

(2) If the review cannot clearly demonstrate that the group does not meet one or more of the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full evaluation of the documented petition under all seven of the mandatory criteria shall be undertaken during active consideration of the documented petition pursuant to paragraph (g) of this section.

(f) The petitioner and interested parties shall be notified when the

documented petition comes under active consideration.

(1) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor.

(2) The petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments.

(g) Once active consideration of the documented petition has begun, the Assistant Secretary shall continue the review and publish proposed findings and a final determination in the **Federal Register** pursuant to these regulations, notwithstanding any requests by the petitioner or interested parties to cease consideration. The Assistant Secretary has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary shall notify the petitioner and interested parties when active consideration of the documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(h) Within one year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the **Federal Register**. The Assistant Secretary has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, the Assistant Secretary shall prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Copies of the report shall be provided to the petitioner, interested parties, and informed parties and made available to others upon written request.

(i) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 days to submit arguments and evidence to the Assistant Secretary to rebut or support the proposed finding. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.

(j)(1) During the response period, the Assistant Secretary shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. The Assistant Secretary shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination.

(k) The petitioner shall have a minimum of 60 days to respond to any submissions by interested and informed parties during the response period. This may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(l) At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence submitted during the response period. The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in § 83.10(i) and § 83.10(k), will not be considered in preparation of a final determination. The Assistant Secretary has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary may also conduct such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record.

(2) After consideration of the written arguments and evidence rebutting or supporting the proposed finding and the petitioner's response to the comments of interested parties and informed parties, the Assistant Secretary shall make a final determination regarding the petitioner's status. A summary of this determination shall be published in the **Federal Register** within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins.

(3) The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension.

(4) The determination will become effective 90 days from publication unless a request for reconsideration is filed pursuant to § 83.11.

(m) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies all of the criteria in § 83.7. The Assistant Secretary shall decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in § 83.7.

(n) If the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

(o) The determination to decline to acknowledge that the petitioner is an

Indian tribe shall be final for the Department.

(p) A petitioner that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may not re-petition under this part. The term "petitioner" here includes previously denied petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have previously been denied under these or previous acknowledgment regulations.

§ 83.11 Independent review, reconsideration and final action

(a) (1) Upon publication of the Assistant Secretary's determination in the **Federal Register**, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the **Federal Register**. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the **Federal Register**.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(1) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(2) The party or parties requesting the reconsideration shall mail copies of the request to the petitioner and all other interested parties.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the **Federal Register**, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

(1) That there is new evidence that could affect the determination; or

(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or

(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or

(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g).

(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to § 83.10(m) to the extent authorized by this section.

(1) The regulations at 43 CFR 4.310–4.318 and 4.331–4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.

(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.

(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.

(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(6) An appellant's reply to an opposing party's answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.

(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.

(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraph (d)(1–4) of this section.

(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraph (d)(1–4) of this section.

(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1–4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary's decision, may review any information available, whether formally part of the record or not. Where the Secretary's review relies upon information that is not formally

part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board's decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner's request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary's determination within 60 days of receipt of all comments and shall notify all parties of the decision.

(g) (1) The Assistant Secretary shall issue a reconsidered determination within 120 days of receipt of the Board's decision to remand a determination or the Secretary's request for reconsideration.

(2) The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. The Assistant Secretary's reconsideration may address any issues and evidence consistent with the Board's decision or the Secretary's request.

(h) (1) If the Board finds that no petitioner's or interested party's request for reconsideration is timely, the Assistant Secretary's determination shall become effective and final for the Department 120 days from the publication of the final determination in the **Federal Register**.

(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.

(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the **Federal Register**.

§ 83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of § 83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§ 83.13 Information collection.

(a) The collections of information contained in § 83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to both the Information Collection Clearance Officer, Bureau of Indian Affairs, Mail Stop 336–SIB, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: December 28, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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